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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 300.

THE UNITED STATES EX REL. REBECCA J. TAYLOR, PLAINTIFF IN ERROR,

vs.

WILLIAM H. TAFT, SECRETARY OF WAR.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MAY 21, 1906.

(20264.)

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In the Court of Appeals of the District of Columbia

THE UNITED STATES *ex Rel.* REBECCA J. TAYLOR, Appellant,
vs.
ELIHU ROOT, Secretary of War.
} No. 1297.

a Supreme Court of the District of Columbia.

THE UNITED STATES *ex Rel.* REBECCA J. Taylor, Plaintiff,
vs.
ELIHU ROOT, Secretary of War.
} No. 45538. At Law.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Petition.*

Filed July 21, 1902.

In the Supreme Court of the District of Columbia.

THE UNITED STATES *ex Rel.* REBECCA J. Taylor
versus
ELIHU ROOT, Secretary of War.
} No. 45538, Law Docket.

The petition of Rebecca J. Taylor respectfully shows:

1. That she is a citizen of the United States, temporarily residing in the District of Columbia, and brings this suit in her own right.

2. That the defendant Elihu Root, is a citizen of the United States and a resident of the city of New York in the State of New York, and is sued as Secretary of War, with respect to the matters and things hereinafter set forth.

3. That heretofore, to wit, on the 24th day of January A. D. 1900, by virtue of the authority vested in the Secretary of War by several statutes in such case made and provided, the petitioner was duly and legally appointed a temporary clerk in the office of the Adju-

tant General of the War Department, such appointment taking effect from the first day of January, 1900, and she immediately thereafter took the prescribed oath of office and entered upon her duties prescribed by law, which duties from that time until the seventh day of June, A. D., 1902, she faithfully, efficiently and continuously performed.

4. That by certain provisions of an act of Congress entitled "An act making appropriations for the legislative, executive and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes," approved April 28, 1902, the petitioner and other clerks similarly ap-
2 pointed and employed in the War Department, were transferred to the competitive classified civil service of the United States and thereby became and were subject to the provisions and entitled to the benefits of the act of Congress, entitled "An act to regulate & improve the civil service of the United States," approved January 16, 1883, and the rules and regulations promulgated by the President of the United States by virtue and in the exercise of the power and authority by said act, the Constitution of the United States, and section 1753 of the Revised Statutes of the United States, conferred upon and vested in him.

5. That among the said rules and regulations promulgated by the President by virtue and in the exercise of the power and authority conferred upon and vested in him by said Constitution, section 1753 of the Revised Statutes of the United States and the act of Congress, entitled "An act to regulate and improve the civil service of the United States," approved January 16, 1883, and sometimes called "the civil-service law," were the following:

"*Rule II.*"

* * * "3. No person in the executive civil service shall dismiss, or cause to be dismissed, or make any attempt to procure the dismissal of, or in any manner change the official rank or compensation of any other person therein because of his political or religious opinions or affiliations." * * *

"8. No removal shall be made from the competitive classified service except for just cause and for reasons given in writing; and the person sought to be removed shall have notice and be furnished a copy of such reasons, and be allowed a reasonable time for personally answering the same in writing. Copy of such reasons, notice and answer, and of the order of removal shall be made a part of the records of the proper department or office; and the reasons for any change in rank or compensation within the competitive classified service shall also be made a part of the records of the proper department or office."

That said rules as aforesaid, so promulgated by the President, were binding upon the defendant, who could not lawfully violate, disregard or evade them.

3 6. That in violation, disregard and evasion of said rules and of the petitioner's rights in the premises, the defendant

undertook to illegally and unlawfully remove her from the competitive classified civil service, in the following manner:

He directed the chief clerk of the War Department to address a letter to the Adjutant General in whose office as aforesaid, petitioner was employed, in terms as follows:

"WAR DEPARTMENT, WASHINGTON, *May* 27, 1902.

"SIR: The Secretary of War directs that Miss Rebecca J. Taylor, temporary clerk in your office, be called upon for a statement as to whether or not she is the author of the letter published in the Washington Post, of May 12, 1902, under the heading 'The flag shall stay put,' as shown in the accompanying clipping.

"If Miss Taylor acknowledges the authorship of this letter, her attention should be invited to section 8 of civil-service rule II, and under the provisions of that rule she should be given three days in which to make any explanation or statement in writing that she may desire to submit in regard to the matter.

"Very respectfully, JOHN C. SCHOFIELD,
Chief Clerk.

"The Adjutant General, United States Army."

That said letter was in due course referred to the chief clerk of the Adjutant General's office, and said chief clerk endorsed the aforesaid letter in the following manner:

"Respectfully referred to Miss Rebecca J. Taylor for the report called for by the Secretary of War.

"Section 8 of civil-service rule II, referred to within reads as follows:

"8. No removal shall be made from the competitive classified service except for just cause, and for reasons given in writing; and the person sought to be removed shall have notice and be furnished a copy of such reasons and be allowed a reasonable time for personally answering the same in writing. Copy of such reasons, notice and answer, and order of removal, shall be made a part of the records of the proper department or office, and the reasons for any change in rank or compensation within the competitive classified service shall also be made a part of the records of the proper
4 department or office.

"R. P. THIAN.

Adjutant General's office, May 28, 1902."

That said letter and endorsement thereon, together with the clipping from the Washington Post referred to in the said letter, a copy of which clipping is annexed hereto, marked "R. J. T. No. 1," and is to be read and taken as a part of this petition, were received by this petitioner on or about the 28th day of May, A. D., 1902.

That within the three departmental business days given to this petitioner by the aforesaid letter of the chief clerk of the War Department in which "to make any explanation or statement in writing, that she might desire to submit in regard to the matter," she

returned the same, together with an endorsement made by her, as follows:

"Respectfully returned, with the information that I am the author of the letter published in the Washington Post of May 12, 1902, under the heading 'The flag shall stay put.'

"Referring to the explanation or statement called for by the Secretary of War, I have the honor to state that not being a temporary clerk, but having been placed within the classified service by act of Congress, having transgressed no civil-service rule, and having received no notice to that effect, nor that 'removal' is 'sought' for 'just cause,' or otherwise, neither any 'reason therefor,' therefore I have not been furnished the conditions upon which to base an explanation or statement; in fact, I am unable to determine the nature of the 'explanation or statement' called for from the communication submitted.

"If the proper authorities will submit 'notice' and 'reasons in writing,' in compliance with section 8, civil-service rule No. 2, I shall be pleased to consider the privilege of 'answering the same in writing,' as permitted by section 8, civil-service rule No. 2.

"I respectfully submit that it is unusual, to say the least, for an individual to plead either innocent or guilty, or to offer a defense where no charge has been preferred.

"Respectfully, REBECCA J. TAYLOR."

5 That thereafter and on the seventh day of June, A. D. 1902, the petitioner received a notice from the aforesaid chief clerk of the War Department, in the following words:

"WAR DEPARTMENT,
"WASHINGTON, D. C., *June* 7, 1902.

"Rebecca J. Taylor, clerk at $840 per annum in the office of the Adjutant General (temporary roll), is hereby discharged to take effect this date.

"By order of the Secretary of War.

"JOHN C. SCHOFIELD,
"*Chief Clerk.*"

To which on the 9th day of June, A. D. 1902, she wrote a reply in the following words:

"WASHINGTON, D. C., *June* 9, 1902.

"The honorable the Secretary of War.

"SIR: I have the honor to acknowledge the receipt of your communication of June 7, 1902, purporting to be an order of discharge from the classified service of the War Department. This order does not comply with the provisions of the civil-service rule 2, section 8, as follows:

"'No removal shall be made from the competitive classified service except for just cause and for reasons given in writing, and the person sought to be removed shall have notice and be furnished a copy

of such reasons and be allowed a reasonable time for personally answering the same in writing.'

"I was not furnished the 'reasons given in writing,' explaining the 'just cause' for the alleged removal. To this I was entitled, and I therefore protest against the alleged order as illegal.

"I hereby declare that I am and at all times since the receipt of said alleged order of discharge have been willing and have held myself in readiness to perform the duties of my office, and that I will report for duty whenever notified.

"Respectfully, REBECCA J. TAYLOR."

To this letter of hers she has received no reply, and although she has been ready at all times since said seventh day of June, A. D. 1902, to faithfully, efficiently and continuously perform her duties as a clerk in the competitive classified civil service, as she had done since the date of her appointment as hereinbefore set forth,

6 yet the defendant has prevented and still prevents her from performing her duties as such clerk.

7. The petitioner further avers that the letter and endorsement received by her as set forth in the preceding paragraph of the petition, did not constitute the reasons required to be in writing by section 8, of civil-service rule No. 2, set forth in paragraph 5 of this petition, where a removal of an employee from the competitive classified civil service for just cause is contemplated, nor did they constitute a copy of such reasons, nor the notice required by said civil-service rule. But the petitioner further avers that though she received no copy of reasons in writing for her attempted removal from office, nor the notice required by said civil-service rule, she believes and therefore avers and expects to show by competent evidence that the reason why the defendant did so as aforesaid attempt to unlawfully remove her from the competitive classified civil service, was because she held political opinions and views differing from those of the defendant and gave expression to them in the public press by the letter that she wrote to the Washington Post, a copy of which she has hereto annexed and made a part hereof, marked "R. J. T., No. 1;" and because she held (and still holds) the political opinions and views set forth in her said letter, and procured the publication of the same, the defendant in violation, disregard and evasion of the aforesaid sections of civil-service rule 2, set forth in paragraph 5, of this petition, and unlawfully and in violation of the petitioner's rights thereunder, and in militation of her right of freedom of speech, guaranteed to her by the Constitution of the United States, attempted to remove her from the position she occupied in the competitive classified civil service, as hereinbefore set forth.

7 The premises considered, the petitioner

Prays.

1. That an order or rule may be issued, directed to the defendant, requiring him to show cause, by a day therein fixed, why a peremp-

tory writ of mandamus should not issue requiring the defendant to restore the petitioner to the position in the competitive classified civil service from which he has unlawfully attempted to remove her and permit her to resume the duties of said office.

2. That a peremptory writ of mandamus may issue directed to the defendant requiring him to restore the petitioner to the position in the competitive classified civil service from which he has unlawfuly attempted to remove her, and permit her to resume the duties of said office.

3. And for such other and further relief as justice and the nature of the case may require.

REBECCA J. TAYLOR.

F. L. SIDDONS,
ADOLPH G. WOLF,
Attorneys for Petitioner.

DISTRICT OF COLUMBIA, *ss:*

I do solemnly affirm that I have read the foregoing petition by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated by information and belief I believe to be true.

REBECCA J. TAYLOR.

Subscribed and affirmed to before me, a notary public in and for the District above mentioned, this 21st day of July, A. D. 1902.

HARVEY T. WINFIELD,
[SEAL.] *Notary Public.*

8 R. J. T. Number 1.

Filed Jul- 21, 1902.

THE FLAG "SHALL STAY PUT."

President Roosevelt's Tribute to the "Splendid Work" Done in Philippines.

Editor Post: In the face of the official Philippine horrors that are being disclosed, horrors which have been perpetrated with the knowledge and by the command of the military authorities in the islands, the American people will read with dismay that at the recent banquet of the Sons of the American Revolution the President of the United States, the Commander-in-chief of the Army and Navy, "drank to the health of the soldiers and sailors of the present day, who, during the last three years, have done such splendid work in the inconceivably dangerous and harassing warfare of the Eastern tropics."

Without an uncivilized mode of warfare during the last three years, the "splendid work" could never have been accomplished. The struggle for liberty would still be going on in Samar had not

"the soldiers of the present day" done that "splendid work" of creating a "howling wilderness." Are we to interpret the expression of the President as approval of the official barbarities committed in the Philippines the past three years? There is abundant proof that the barbarities began with the war, only increasing in degree, growing "stiffer and stiffer," as Gen. Hughes testified, until the "splendid" work is nearing completion.

If the work done was "splendid," the workers may not be classed as "wrongdoers" subject to punishment. But should such become a political necessity, a Chaffee-Smith-Bell-Hughes-Waller-Funston scapegoat will not appease the sense of justice of the American people. They will demand the political lives of those in authority who place the seal of approval upon the diabolical work these human bloodhounds have accomplished.

What is this "splendid work" that has been done in the tropics? The glory, if glory it be, died with the booming of Dewey's last cannon. Our army officers surrendered all claim to honor by carrying on a policy of deception and trickery, which began as soon as the army disembarked upon Philippine soil. Failing by such means, they have operated under double-distilled Spanish methods until the United States counts more victims in three years than Spain dispatched in three centuries.

Is it a "splendid work" to hold up a people and rob them of country and nationality at the point of the bayonet? Is it a "splendid work" to turn the cannon upon allies because they decline to yield their inalienable rights? Is it a "splendid work" to sweep thousands from the earth because they take up arms in defense of home and liberty? Is it a "splendid work" to apply the torch to the homes of earth while helpless women and babes and tottering age flee before the flames that blot out those hallowed spots? Is it a "splendid work" to make God's fair isles a "howling wilderness?" Is it a "splendid work" to slay the wounded on the battlefield, to spare no prisoners of war, but to make them the target of a three days' shooting match? Is it a "splendid work" to choose by lot an innocent person—a prisoner of war—and execute him for the crime of another? Is it a "splendid work" to torture human beings until, racked with pain, writhing in agony, frenzied with anguish, the will power shattered, they admit anything charged, however false, to gain a moment's respite? Is it a "splendid work" to exterminate a people by murdering non-combatants, all over ten years of age, leaving the remnant to the horrors of starvation? All these facts are in evidence. They have been admitted by the official perpetrators. Is this the way "strong men, not weaklings," prove their strength? This is the strength, not of men, but of demons.

Oh, what "splendid work," what valor, what heroism, what magnificent courage "the gallant Americans, wearing the uniform of the American Republic," displayed. How "gloriously have they upheld the most glorious traditions of the past," as, protected by a moving breastwork of enforced Filipino citizens, they swept forward, armed to the teeth, to valiantly battle against those fierce Malay

warriors, Filipino boys of eight and ten years, come out to defend the honor of their mothers, if perchance they escaped the brutal massacre—come forth to avenge the slaughter of their sires and the murder of their brothers, whose life blood drenched the soil of their native land. What "inconceivably dangerous and harassing warfare of the Eastern tropics" was this for "the soldier of the present day."

How flattered must be the survivors of the Grand Army of the Republic, how exalted the military giants "wearing the blue and the gray," how elated the Sons of the American Revolution, whose ancestors fell at Lexington and fought at Bunker Hill, and left the prints of their bleeding feet upon the snows of Valley Forge—what world-wide fame to have their names coupled with "those gallant (?) Americans," disgracing "the uniform of the American Republic" in the Philippines.

Long will Theodore Roosevelt drink to the health of those who wrought the "splendid work" of death ere the spirit of liberty shall be crushed from the souls of the infant heroes of the Philippines, but not till the land is left desolate, not while humanity lives in the American heart, not till the doctrine of the brotherhood of man dies in Christendom, not until God forgets his brown children will the flag "stay put" on the blood-soaked soil of the Philippines. Eternal shame on such ignoble warfare.

REBECCA J. TAYLOR.

9 *Rule to Show Cause.*

Filed July 21, 1902.

In the Supreme Court of the District of Columbia.

THE UNITED STATES *ex Rel.* REBECCA J. Taylor
versus
ELIHU ROOT, Secretary of War.
} No. 45538, Law Docket.

Order.

Upon consideration of the petition of Rebecca J. Taylor, filed in the above-entitled cause, it is by the court this 21st day of July, A. D., 1902,

Ordered

That the defendant, Elihu Root, Secretary of War, show cause on or before the 28th day of July, A. D., 1902, why the prayers of said petition should not be granted, provided a copy of this order and of said petition be served on said defendant on or before the 24th day of July, A. D., 1902.

A. B. HAGNER,
Asso. Justice.

Marshal's Return.

Served copy of within order and copy of the petition in this cause on defendant personally, July 21, 1902.

AULICK PALMER, *Marshal.*

10 *Answer of Respondent.*

Filed August 9, 1902.

In the Supreme Court of the District of Columbia.

THE UNITED STATES *ex Rel.* REBECCA J. Taylor
vs.
ELIHU ROOT, Secretary of War. } No. 45538. At Law.

Answer of the respondent, The Secretary of War, to the petition of the above-named petitioner and to the rule to show cause why the prayers of the said petitioner should not be granted.

This respondent for answer to the said petition, and as cause against the said rule, shows and certifies as follows:

1. That so far as the respondent is informed, the petitioner is a citizen of the United States, temporarily residing in the District of Columbia.

2. That the defendant, Elihu Root, is, as stated, Secretary of War of the United States.

3. That the petitioner was, on January 24th, 1900, legally appointed a temporary clerk in the office of the Adjutant General of the Army, as stated in the second paragraph of said petition and the said petitioner remained a clerk in said office until June 7,
11 1902, when she was lawfully removed and discharged for the reasons and by the authority hereinafter set forth.

4. That by virtue of the act of April 25th, 1902, stated in said petition, the petitioner was transferred to the classified civil service of the United States and thereby became subject to all acts, rules and regulations in force and governing such classified civil service.

5. That it is true that on November 2nd, 1896, the President of the United States promulgated the certain rules set forth in the fifth paragraph of the relator's petition. But the respondent says that such rules are, in law, administrative directions or instructions from the President to those holding office by virtue of his appointment indicating the manner in which they shall exercise their duties as his agents in the removal of subordinates, and have no other *full* effect or virtue whatsoever.

And this respondent further says that such orders, directions or instructions were not intended, and if so intended, could not have the effect to restrict in anywise the constitutional right and power

of this defendant as the head of a department of the Government to appoint and remove such inferior officers in said department as are provided for by the Congress of the United States; nor do such orders, directions or instructions have force, effect or virtue to vest in any employee any right cognizable in a court of law in the enforcement of or obedience to such instructions, or to make the head of any executive department answerable to the judicial power for any supposed violation, disregard, evasion or disobedience of the same; but for all violation, disregard, evasion or disobedience thereof the head of each executive department is answerable only to the President, in whom the executive power is vested by the Constitution.

6. In answer to the sixth paragraph, the respondent says that, becoming cognizant of a certain newspaper article
12 or letter published in the Washington Post of May 12, 1902, and purporting to be signed by the petitioner (which article is the same as set out in the exhibit marked R. J. T. No. 1 and annexed to the petition herein), he, as Secretary of War, by reason of the derogatory and disrespectful statements therein appearing of and concerning the President of the United States in relation to the conduct of him as Commander-in-chief of the Army of the United States in the suppression of the insurrection in the Philippine islands, as well as of and concerning the officers and men acting under his command and direction, which statement purported to be supported by evidence of an official character within the knowledge of the author thereof, did, on May 27, 1902, cause the chief clerk of his said department to address to the Adjutant General of the United States Army, in whose office the petitioner was then employed as a clerk, the certain letter set forth in the sixth paragraph, in which was enclosed and referred to a true copy, in the form of a newspaper clipping, of the said article, of a letter published in the Washington Post as aforesaid and directing that the petitioner be called upon for a statement as to whether she was the author of said article and if so, that she should be given three days in which to make any explanation or statement in writing in regard to the same.

That in pursuance of the direction therein contained, the chief clerk of the Adjutant General's office, did, on May 28, 1902, refer to the said petitioner the said letter enclosing and referring to the newspaper article or clipping with an endorsement requesting the petitioner to make the statement called for in said letter and at the same time setting forth *in ipsissimis verbis* section 8 of civil-service rule II, which said letter, enclosed newspaper clipping and endorsement requesting an answer thereto, constituted, upon their face, a
13 charge that the petitioner had, while an employee in the office of the Adjutant General of the Army, written and published the said letter or article appearing in the Washington Post, May 12, 1902, under the heading "The flag shall stay put," which said article was then and there set out in words and figures and showed upon its face derogatory and disrespectful statements of and concerning the President of the United States and the officers acting

under his orders, which said statements purported to be supported and verified by evidence of an official character within the knowledge of the author thereof.

That within three days after the receipt by the petitioner of the letter, newspaper article and endorsement aforesaid, and in response thereto, the petitioner returned the same, together with an endorsement thereon of her own, wherein she admitted that she was the author of the newspaper article referred to as published in the Washington Post of May 12, 1902, and made no defense to the charge of having written and published the same; nor did the said petitioner in and by her said answer, offer or submit any justification, excuse, retraction or mitigation of the statements concerning the President by her in said article made and published. But, on the contrary, ignoring the plain and obvious nature of the statements made in said newspaper article thus drawn to her notice and attention, the petitioner proceeded to take exception to the character of the notice addressed to her with the apparent object of involving the Secretary of War in a controversy with her in respect thereof and stating "that if the proper authorities will submit 'notice in writing' in compliance with sec. 8, civ. service rule No. II," she,
the petitioner, would be pleased to consider the privilege of
14 "answering the same in writing" as permitted by sec. 8 civ. service rule No. II.

All of which answer, except the express admission of the authorship of the said published article, was and is, in the opinion of the respondent as Secretary of War, captious, insubordinate and disrespectful, prejudicial to order and the efficiency of the service.

The respondent further says that the statement of the petitioner was, on June 2, 1902, submitted to the Secretary of War by the Adjutant General by an endorsement in words and figures as follows: 'Respectfully submitted to the Secretary of War, inviting attention to Miss Taylor's statement, in preceding endorsement. H. C. Corbin, Adjutant General, Major General, U. S. A. June 2, 1902."

This respondent further states that on June 6, 1902, he, as Secretary of War, after due consideration of the article in question so published as aforesaid, and after consideration of the answer submitted by the petitioner, decided that the said article was prejudicial to order and the efficiency of the service of said War Department and such offence as rendered the further connection of the petitioner with said service incompatible with the best interests of the same; whereupon on said day last aforesaid this respondent, the Secretary of War, caused the following order of removal to be made for the action of the chief clerk and as a part of the records of the War Department, to wit:

15 "WAR DEPARTMENT, OFFICE OF THE SECRETARY.

Memorandum for the Chief Clerk.

After full opportunity for explanation, Miss Taylor is removed for writing and publishing the letter appearing in the Washington Post

May 12, 1902, under the heading of 'The flag "shall stay put,"' subscribed by her name.

ELIHU ROOT.
Secretary of War."

By virtue of which order, the chief clerk of said department, on June 7th, 1902, promulgated an order discharging the petitioner, which is set forth in the petition aforesaid, by which order and the promulgation thereof the said petitioner became and was separated from the executive civil service of the United States, which separation and removal is the same identical separation and removal whereof the petitioner in her said petition complains. The respondent further says that after the separation of the petitioner from the service as aforesaid, to wit, on June 9th, 1902, he received the letter set forth in her said petition, to which he made no reply, and that thereafter, on June 10, 1902, he received from the said petitioner another letter, not mentioned in her said petition, to the effect following:

"1224 13" St. N. W.,
Washington, D. C., *June* 10, 1902.

Hon. Elihu Root, Secretary of War.

Sir: Referring to your arbitrary exercise of unconstitutional authority as seen in your imperial decree of the 7th day of June, 1902, purporting to be my dismissal from the continuance of certain duties as an employé in the classified civil service in the Department of War, you are hereby notified that I now demand reinstatement to my position in said service.

If within three days, I shall not have received from you, directly or through an authorized subordinate, notice of my reinstatement as demanded, I will proceed to take such legal action in the premises as I may be advised therein.

Respectfully, REBECCA J. TAYLOR."

16 To which request for reinstatement, the respondent, having no power or authority to accede thereto, and being under no duty to answer the same, made no reply.

7. The respondent further denies each and every allegation of the seventh paragraph of the petition, and says that he did not dismiss or cause to be dismissed or made any attempt to procure the dismissal of the petitioner, because of her political or religious opinion or affiliations, and this respondent further returns and certifies that the true facts, grounds, causes and reasons of his action in dismissing the petitioner were those hereinbefore set forth in the sixth paragraph of this answer and none other.

And this respondent, expressly insisting that all and every the acts done by him and caused to be done in respect of the dismissal of the petitioner, were done in conformity with the rules and regulations promulgated for the government of the civil service in the executive departments and the dismissal of persons therefrom, nevertheless respectfully submits to the court that the petitioner in and

by her said petition has shown no vested right, title or interest in or to the employment formerly exercised by her in the office of the Adjutant General of the United States Army, and that the relation of such petitioner, as an employee, to the executive civil service, in respect of appointment, promotion and removal, is a matter wholly within the competence and cognizance of the political department, and the action of the head of an executive department in respect thereof is not subject to be reviewed, reversed, set aside or controlled by a court of law, nor can his action in that behalf be commanded, directed or compelled by the writ of mandamus as the petitioner in her said petition has prayed.

17 Wherefore, having fully answered, the respondent prays that the prayer for said writ be denied, the rule to show cause be discharged, and he be hence dismissed with his reasonable costs.

JOHN C. SCHOFIELD,
Chief Clerk, War Dep't,
for the Secretary of War in his Absence.

ASHLEY M. GOULD,
HENRY H. GLASSIE,
Attorneys for Respondent.

DISTRICT OF COLUMBIA, *ss:*

John C. Schofield, chief clerk of the War Department being first duly sworn, deposes and says:

That the Secretary of War and the Assistant Secretary of War being absent from Washington, he is authorized by law to sign papers requiring the official signature of the Secretary; that he has read the foregoing answer by him subscribed, and knows the contents thereof; that the matters therein stated are true to his knowledge, save those stated upon information and belief, which he believes to be true.

JOHN C. SCHOFIELD,
Chief Clerk, War Dep't,
for the Secretary of War in his Absence.

Subscribed and sworn to before me this ninth day of August, A. D. 1902.

[SEAL.]

JNO. B. RANDOLPH,
Notary Public.

18 *Demurrer.*

Filed September 26, 1902.

In the Supreme Court of the District of Columbia.

REBECCA J. TAYLOR
vs.
ELIHU ROOT, Secretary of War. } No. 45538, Law Docket.

Demurrer.

1. Now comes the petitioner, Rebecca J. Taylor, by F. L. Siddons and Adolf G. Wolf, her attorneys, and says: The answer of the respondent, Elihu Root, Secretary of War, is bad in substance.

F. L. SIDDONS,
ADOLPH G. WOLF,
Attorneys for Petitioner.

Among the points of law intended to be argued at the hearing upon the above demurrer, are

1. The civil-service rules promulgated by the President of the United States, and more particularly sections 3 and 8 of rule 2, have the force of law and were and are binding upon the respondent.

19 2. That the said respondent has attempted to remove said petitioner from the competitive classified civil service of the United States, without warrant or authority of law.

3. That the said respondent attempted to remove said petitioner from said services without just cause.

4. That the said respondent has attempted to remove said petitioner from said service without furnishing her with a copy of the reasons for such attempted removal.

5. That it appears by the answer of the said respondent that said attempted removal of said petitioner from said service was because of her political opinions, in violation of said section 3, of rule 2, of said civil-service rules.

6. That the said civil-service rules are not merely administrative directions or instructions from the President to said respondent and others holding office in the United States Government by virtue of his appointment, but that they had and have full effect, binding force and virtue in law.

7. That the respondent, as Secretary of War, or any other head of an executive department of the Government of the United States has no constitutional right of removing subordinates in violation of the laws of Congress or of rules promulgated by the President thereunder or otherwise.

8. That the power of appointment and removal of the respondent as Secretary of War or of any head of an executive department, is

regulated and limited by the laws of Congress and the rules promulgated by the President thereunder.

9. That a subordinate officer or employee of the United States Government, appointed to office by virtue of the Constitution and the laws of Congress, made thereunder, has a vested right to
20 such office until removed by the proper authorities acting within the scope of their powers and such a right is cognizable and may be enforced by a court of law.

10. That the reasons for the attempted removal of the petitioner, assigned by the respondent *post litem motam* did not constitute the "just cause" contemplated by the aforesaid section 8, of civil-service rule 2.

11. That the writing by the petitioner of the letter of May 12, 1902, set forth in said petition, did not constitute a reason or "just cause" for the removal of said petitioner from her said office.

12. That none of the letters, orders or writings of the respondent or his agents or subordinates transmitted to said petitioner, can be construed as a copy of charges or reasons for removal as contemplated and required by the aforesaid section 8, of civil-service rule 2.

13. That the petitioner's said letter of May 12, 1902, was the public expression of her political opinions upon certain political views and policy of the President of the United States, the freedom to express which is guaranteed to her by the Constitution of the United States; and such public expression of her political opinions is also protected by the aforesaid section 3, of civil-service rule 2, and does not constitute the "just cause" for removal from her said office contemplated by the aforesaid section 8, of civil-service rule 2.

14. That the petitioner has by the facts set out in her petition, and admitted by the respondent in his answer thereto, shown a right to her position as a clerk in the competitive classified civil service of the United States and that this court should, by a mandamus, restore her to her said position.

21 15. That none of the matters set out in the answer of the respondent should, or ought to prevent the petitioner from obtaining the relief sought by her in her said petition.

22 *Order for Withdrawal of Appearance.*

Filed January 19, 1903.

In the Supreme Court of the District of Columbia, the 19th Day of January, 1903.

THE U. S. *ex Rel.* REBECCA J. TAYLOR
vs.
ELIHU ROOT, Secretary of War. } At Law. No. 45538.

The clerk of said court will please enter the withdrawal of our appearance for the petitioner in the above-entitled cause.

F. L. SIDDONS,
ADOLPH G. WOLF,
Attorneys for Petitioner.

23 *Demurrer Overruled, &c.*

Filed March 16, 1903.

In the Supreme Court of the District of Columbia.

UNITED STATES *ex Rel.* REBECCA J. TAYLOR
vs.
ELIHU ROOT, Secretary of War. } Law. No. 45538.

This cause coming on to be heard upon the petition, answer and the demurrer thereto, and being argued, it is, upon consideration thereof this 16th day of March A. D. 1903, adjudged and considered that the demurrer of the petitioner to the answer of the defendant be, and the same is hereby overruled:

Whereupon the petitioner electing in open court to stand upon her said demurrer, it is this 16th day of March A. D. 1903, further adjudged and considered that the prayer of the petitioner for a writ of mandamus be denied, the rule to show cause discharged and the petition dismissed with costs.

And the petitioner, in open court, prays an appeal to the Court of Appeals, which is hereby allowed and the appeal bond thereon fixed at fifty dollars ($50.00).

E. F. BINGHAM,
Chief Justice.

Memorandum.

March 24, 1903.—Appeal bond filed.

[Endorsed:] 45538.

24 *Opinion of Court.*

Filed March 26, 1903.

In the Supreme Court of the District of Columbia.

THE UNITED STATES on the Relation of Rebecca J. Taylor
vs.
ELIHU ROOT, Secretary of War. } No. 45538. At Law.

Oral opinion of Mr. Chief Justice Bingham, delivered March 16, 1903.

This case has been argued and submitted to the court upon the demurrer to the answer of the defendant to the petition. Various propositions of law have been submitted and argued to the court—very lengthy oral arguments having been made and full briefs having been furnished to the court for its benefit in its consideration, in

addition to the arguments presented by counsel and the petitioner in proper person.

The petition for the writ of mandamus presents the grounds upon which the plaintiff claims that she has been improperly and wrongfully discharged from a clerical position in the War Department, and asks that this court intervene and exercise the power vested in it, by virtue of its authority to issue in a proper case the writ of mandamus, in order that she may be reinstated by the order of this court in the position from which she claims to have been wrongfully discharged.

(After reading the pleadings, the court proceeded:)

In disposing of this matter, I have thought proper to read the pleadings, as they are essential in order to understand the decision of the court, and are reasonably brief.

25 The demurrer, of course, admits all the facts that are properly pleaded in the answer, and nearly all the facts stated in the petition are admitted in the answer.

I shall not undertake to examine this case in the order in which it was presented by counsel for the defendant or by the complainant herself. The matters seem to arrange themselves in the following order, in my mind.

It is conceded that the petitioner was lawfully appointed a temporary clerk, and thereafter was by virtue of an act of Congress subjected to the rules of the civil service and made a member of the competitive force under the civil-service rules; that she was removed, because she had written and published a certain article in the Washington Post, to which the defendant took exception and called the attention of petitioner, also calling her attention to rule 2, section 8, civil-service rules, and advised her that she had the opportunity of within three days giving her reasons for having written the article in question; to this she replied that she declined to give any reasons for writing the article, and claimed that charges of a distinct character should be presented against her in answer to which she should have three days to give her reasons for having written the article.

The Secretary of War in his answer claims that these rules and regulations, and the particular rule and regulation which was quoted by the Secretary of War and referred to by the petitioner in her petition and upon which she relies in her claim that she had not been properly notified by the Secretary of War of any charges against her, relate simply to the administration of the affairs of the War Department by the Secretary of War, that they do not have the force of law authorizing a court of justice to control the exer-

26 cise of the discretion of the Secretary of War, that they cannot have the power to repeal any act of Congress or any provision of the Constitution of the United States; that if these rules in terms upon their face seem to undertake to repeal, modify or in anywise affect existing acts of Congress or any provision of the Constitution, that they are to that extent unconstitutional, and cannot be regarded by this court as conferring any power upon it or as placing the Secretary of War under the control of this court.

There can be no question but what that is a correct statement of the law. It has been decided by the Supreme Court over and over again; it has been decided by the inferior Federal courts—very recently, almost from the time of the civil-service law, at any rate, from the time that the President and Civil Service Commission were authorized to make rules—that the only effect of those rules is to confer power, duty and obligation upon the appointing power.

So far as it is claimed that the Secretary of War may not have strictly and technically complied in his proceedings in relation to this publication with the civil-service rules, and especially with the strictness ordinarily required in a proceeding in a court of justice, this court cannot furnish any remedy, if there be any at all, it being a purely administrative matter.

Congress cannot delegate its legislative power, and while it may authorize subordinate officers to exercise discretion and may authorize them to make rules and regulations in regard to the execution of particular duties or the requirements of a particular law, yet those rules and regulations do not have the effect of an act passed by Congress, nor can Congress delegate to an inferior body authority so as to make it a law. Congress may make those rules obligatory
27 upon the administrative officers, officers who are appointed to administer the law, yet it does not have any further effect than that. So if those officers who are charged with performing that duty, and who are authorized to make rules and regulations to aid them in doing so should not properly perform their duty, they would be dealt with precisely as they would in failing to discharge any other duty with which they were charged by law.

It has been held in this same connection that, under the Constitution, the appointment of these subordinate officers, or inferior officers as they are called in the Constitution, is a duty which Congress may devolve upon heads of departments, the courts, or the President himself. It has been held that the power given to appoint implied the power to dismiss. That has been held for the last hundred years, when the first case came up, and so on continuously up to within a very recent date. The Supreme Court of the United States has held that the power to appoint implied the power to dismiss, and nothing short of a legislative act in reference to the appointment would avail the party who might claim that the power had not been properly exercised.

There is no other legislation, I believe, except a section of the statute which provides that no person shall be dismissed from any position in the Federal departments because of failure to make contribution for any political purposes.

But even if it were true, as petitioner claims, that neither the President nor the Secretary of War had power to dismiss her, and that the civil-service rules had the force and effect of law, and had the force and effect to repeal, or to provide that an inference which has been recognized and established by the courts of justice
28 almost since the foundation of the Government does not obtain and shall no longer be considered law, I say even if that

were not so, and we took this case up as presented to us, as a case which should be heard and determined with reference to the provisions of the civil-service law and the rules of the commission, I should be bound to say that discretion is necessarily vested in the Secretary of War; in the exercise of his duty he must act upon information which he may have and upon evidence that may affect his judgment as to the propriety of a removal from office, and that this court, under such circumstances where discretion is given to an administrative officer, has no power by mandamus or injunction to intervene for the purpose of controlling that discretion.

Case after case of that character has been decided by the Supreme Court. Scarcely a month has passed during the sixteen years that I have been here, where we have not had occasion to apply that principle to the conduct of public officers connected with the administration of the Government, who have been invested with the discharge of public duty. It has been held that if the duty called for the exercise of any discretion in its discharge, then it is a matter entirely beyond the intervention of the court of law.

I think that whatever may be said of the propriety of the action of the Secretary of War, there was certainly enough in that matter presented to the Secretary of War to call for the exercise of his judgment in deciding it, and in doing that he would be protected if he did not comply with all the technical requirements of the law; it would be simply an irregularity in the procedure, which would not affect the question of the jurisdiction of this court. The fact
29 that he improperly performed the duty, does not invest this court with power to assume jurisdiction over the transaction and say that, because the Secretary of War or the President had failed to comply with all the steps and in their order, and with the particularity which would be proper at least in a court of law, the action was erroneous.

But we have cases to the effect that the proceedings taken by an executive officer in the discharge of his duty which he may have been invested with are not to be held to that strict and technical mode of proceeding and pleading that courts of equity and law require, but if his proceedings were such as were understood by the parties affected, and such as did no injustice at any rate, they are as binding upon the parties as though the utmost precision had been observed.

Now in looking at this record, in looking at the article written by the petitioner which is the subject of the controversy originally in this case, it is apparent that the writer of it could not but be cognizant of what would be the cause of the complaint of the Secretary of War against her for having written it, and while in her reply she admitted its authorship but stated that she would consider the propriety of answering and giving her reasons when properly charged, I cannot but believe—and I am now taking up a matter which perhaps it is not necessary to consider, but I do it because it appears from this record—that the petitioner has no reason to call upon the court; that the course pursued by the Secretary of War gave her

the proper time to reply, and that under the circumstances developed in the pleading and not denied by any one, it must be patent that this petitioner, who has shown herself to be a very intelligent woman, could not help but understand what was required of
30 her when she was invited to give her reasons for writing the article. And having an understanding of what she was called upon to answer, she had no just reason to say to her superior officer, to whom she must be under some obligation—and while she may be supposed as a general proposition and so far as fundamental rights are concerned to have equal privileges with the defendant, yet in a matter of this kind, relating to civil-service rules to which she appeals for her protection, she must have understood that the reasons called for were reasons for writing such an article as that, and justifying it, if she should be able to do so.

There are some other matters which I had intended to advert to in the decision of this case, but I will not do so. I have this to say.

The plaintiff has appealed to the Constitution and the guarantee of the Constitution in regard to life, liberty and property and the freedom of speech, and has claimed that the article in question was an expression of her political and religious opinions. I can hardly see that the article gives any indication or enunciation of her religious views or belief of a religious character, and as to political opinion, it is quite as difficult to understand as an announcement of any particular political views that petitioner had. It seemed to be denunciatory of certain acts of the officers and men of the Army of the United States in the conduct of the war to suppress insurrection in the Philippine islands, and of the President of the United States for an enunciation of his sentiment in regard to that army on some public gathering a short time preceding the publication.

I have this to say in regard to that. While liberty of
31 speech is guaranteed to every citizen of the United States, it has often, over and over again, been held that that does not authorize or justify license, which is a far different thing. I think this article is so far in addition to what it would have been necessary for the petitioner to state with reference to her superior officer—for the President of the United States is the head of the civil and military government of the United States—so far in addition to what it would have been necessary for her to write in order that she might express any opinion that she had as to the general policy of the Government or as to any particular, that it must be regarded as entirely beyond what was intended as within the scope of the Constitution with regard to the freedom of speech and the rights of persons and property; and being beyond that, and within the limits of what is termed license, it is not protected by the Constitution.

E. F. BINGHAM, *C. J.*

Interlineation on 4th page before signing.

E. F. B.

32 *Order for Preparation of Record.*

Filed April 1, 1903.

In the Supreme Court of the District of Columbia, the — Day of ——, 1903.

THE UNITED STATES *ex Rel.* REBECCA J. Taylor
vs.
ELIHU ROOT, Secretary of War. } At Law. No. 45538.

The clerk of said court will prepare a transcript in the above-entitled cause, consisting of the following:
Petition.
Rule to show cause.
Answer of respondent.
Demurrer to answer.
Withdrawal of attorneys for relator.
Order of the court, and
Opinion of Chief Justice Bingham.

REBECCA J. TAYLOR.

33 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 33, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 45538, at law, wherein The United States *ex rel.* Rebecca J. Taylor is plaintiff, and Elihu Root, Secretary of War, is defendant, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 2nd day of April, A. D. 1903.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1297. The United States *ex rel.* Rebecca J. Taylor, appellant, *vs.* Elihu Root, Secretary of War. Court of Appeals, District of Columbia. Filed Apr. 3, 1903. Robert Willett, clerk.

22 Tuesday, December 1st, A. D. 1903.

THE UNITED STATES EX REL. REBECCA J. TAYLOR, appellant, *vs.* ELIHU ROOT, SECRETARY OF WAR. } No. 1297.

The argument in the above-entitled cause was commenced by Mr. N. E. Dawson, attorney for the appellant, and was continued by Mr. C. A. Keigwin, attorney for the appellee, and was concluded by Mr. N. E. Dawson, attorney for the appellant.

Tuesday, February 16, A. D. 1904.

THE UNITED STATES EX REL. REBECCA J. TAYLOR, appellant, *vs.* ELIHU ROOT, SECRETARY OF WAR. } No. 1297.

The resignation of the appellee, Elihu Root, Secretary of War, and the appointment of William H. Taft as his successor having been suggested, it is, upon motion of Mr. N. E. Dawson, of counsel for the appellant, now here ordered by the court that the said William H. Taft, Secretary of War, be, and he is hereby, made the party appellee in the above-entitled cause, in the place and stead of Elihu Root, resigned.

23 Court of Appeals of the District of Columbia.

THE UNITED STATES EX REL. REBECCA J. TAYLOR, appellant, *vs.* WILLIAM H. TAFT, SECRETARY OF WAR. } No. 1297.

OPINION.

Mr. Chief Justice Clabaugh, of the Supreme Court of the District of Columbia, (who sat with the court in the hearing of this cause in the absence of Mr. Chief Justice Alvey), delivered the opinion of the court:

The appellant in this case was a clerk in the classified civil service of the United States, and as such employed in the War Department, and whilst in such service there appeared in a newspaper published in Washington an article which severely reflected upon the President of the United States, and to which article the name of the appellant was appended. A few days later the Secretary of War directed that an inquiry be made of the appellant concerning the authenticity of the article in question, and whether she admitted that she was the author of it; then, in that event, to have her attention directed to section 8 of civil service rule No. 11, and that she be given three

days in which to submit any explanation or statement she may desire to make concerning it. The appellant answered, admitting that she had written the article, but offered no statement or explanation concerning it, but took the ground that no charge had been preferred against her, and therefore she was not called upon to make any further answer under the said rule No. 11.

Section 8 of Rule 11 of the Civil Service Rules provides: "No removal shall be made from the competitive classified service except for just cause, and for reasons given in writing; and the person sought to be removed shall have notice and be furnished a copy of such reasons and be allowed a reasonable time for personally answering the same in writing. Copy of such reasons, notice and answer, and of the order of removal shall be made a part of the records of the proper department or office. . . ."

Upon the receipt of the appellant's answer the Secretary of War thereupon issued an order dismissing her from the service, and filed in the office of the War Department a memorandum of the same, assigning as his reasons the publication of the article in question.

The appellant thereupon filed a petition for mandamus against the Secretary of War, seeking to compel him to reinstate appellant in her former position. In appellant's petition she sets out in detail all the facts, the substance of which we have recited, and assigns as ground of relief—

First. That the procedure taken for her dismissal was not in accordance with the executive regulations set out, in that no copy of the reasons for her dismissal was served upon the appellant as provided for in section 8 of Rule 11, heretofore set out.

Second. That the removal of appellant was because of her political opinions, which is prohibited by section 3 of Rule 11, and which reads: "No person in the executive civil service shall dismiss, or cause to be dismissed . . . any person therein because of his political or religious opinions or affiliations;" and the appellant's petition further urges "that said rules, as aforesaid, so promulgated by the President, were binding upon the appellee, who could not lawfully violate, disregard, or evade them."

The appellee filed an answer to the petition, in which he denies that the appellant was removed because of any political opinion, but asserts that the removal was made because of the article published by her, and "by reason of the derogatory and disrespectful statement therein appearing of and concerning the President of the United States, in relation to the conduct of him as Commander in Chief of the Army of the United States." The appellee further declares that the character of the appellant's answer to him "was prejudicial to the order and efficiency of the service;" that the executive regulations above quoted are not laws and can not be enforced by the courts; that the matter of "dismissal from office is one of discretion, and, therefore, can not be controlled by mandamus."

To this answer a demurrer was filed, and the court below having overruled the demurrer, the cause comes here upon an appeal from the judgment entered upon the demurrer.

Since the argument in this court the appellee has been succeeded as Secretary of War by William Howard Taft, who by proper proceedings has been substituted as appellee in this cause.

The appellant has raised various questions, but preliminary to them all is that of the authority of the courts to review the action of the Secretary of War in removing her. That the courts have no such jurisdiction is entirely clear to us. That the right of appointment carries with it the right of removal has been determined so many times that it would be useless to cite authority in support of the proposition. This power of removal, therefore, would seem to be unrestricted except as controlled by legislation of Congress. This the appellant contends has been done by the civil-service act of January 16, 1883, 22 Stat. at L. 413, but an inspection of that act shows that the only restriction placed upon the right of removal is that "No officer or employee of the United States mentioned in this act, shall

> discharge . . . any other officer or employee for giving
> 24 or withholding or neglecting to make any contribution of
> money or other valuable thing for any political purpose."

It is perfectly plain from the reading of the act that Congress never intended to limit the power of removal except for the single cause of failure to contribute money or services to a political party. The entire policy of civil service has been to restrict the power of appointment, not removal, because once the right to appoint is restricted within certain defined classifications, the reason for political removals has ceased, and, therefore, the right of removal has remained unchanged except for the political causes assigned. Not only has the statute made this plain, but reason is with it.

The question of fitness, capacity, attention to the duties of an officer is necessarily to be determined by the heads of the Departments; this determination is only arrived at by the exercise of discretion and judgment, and will it be seriously contended that the courts can by proceedings in mandamus review this discretion and judgment? Will it be asserted that the thousands of employes in the classified service of the Government can appeal to the courts for the review of the action of their superior officer whenever he may find cause to remove one or more of them for inefficiency, whether it be in the total failure of the employee to perform his or her duties, or whether it be for acts which, in the judgment of that superior officer, are detrimental to the discipline of the service?

It seems to us the very statement of the contention is its own refutation. Any other conclusion would encourage inefficiency and incompetency in office and be fruitful of insubordination. We understand our conclusion of this question to have the support of the Supreme Court in the case of Keim *v.* U. S., 177 U. S. 290, when Mr. Justice Brewer, delivering the opinion of the court, says:

"The appointment to an official position in the Government, even if it be simply a clerical position, is not a mere ministerial act, but one involving the exercise of judgment. The appointing power must determine the fitness of the applicant, whether or not he is the proper one to discharge the duties of the position. Therefore it is

one of those acts over which the courts have no general supervising power. In the absence of specific provision to the contrary, the power of removal from office is incident to the power of appointment. 'It can not for a moment be admitted that it was the intention of the Constitution that those offices which are denominated inferior offices should be held during life.' Unless, therefore, there be some specific provision to the contrary, the action of the Secretary of the Interior in removing the petitioner from office on account of inefficiency is beyond review in the courts, either by mandamus to reinstate him or by compelling payment of salary as though he had not been removed. . . .

"Nowhere in these statutory provisions (civil-service act of January 16, 1883), is there anything to indicate that the duty of passing in the first instance upon the qualifications of the applicants, or, later, upon the competency or efficiency of those who have been tested in the service, was taken away from the administrative officers and transferred to the courts. Indeed, it may well be doubted whether that is a duty which is strictly judicial in its nature. . . .

"These are matters peculiarly within the province of those who are in charge of and superintending the Departments, and until Congress by some special and direct legislation makes provision to the contrary, we are clear that they must be settled by those administrative officers."

Having taken this view of the case, for the reason heretofore set out, we find it unnecessary to pass upon the many other points raised, and, therefore, the action of the court below in denying the prayer of the petitioner for a writ of mandamus and the dismissal of the petition is affirmed, with costs.

25 Wednesday, June 8th, A. D. 1904.

April term, 1904.

THE UNITED STATES EX REL. REBECCA J. TAYLOR, appellant, *vs.* WILLIAM H. TAFT, SECRETARY OF WAR. } No. 1297.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. Justice Clabaugh, June 8, 1904.

In the Court of Appeals for the District of Columbia.

October term, 1903.

UNITED STATES EX REL. REBECCA J. TAYLOR, appellant, *vs.* WILLIAM H. TAFT, SECRETARY OF WAR, APPELLEE.	No. 1297. No. 1, special calendar.

Now at this time comes the plaintiff in error herein and petitions this honorable court to grant her a writ of error to remove the same to the Supreme Court of the United States.

N. E. DAWSON,
Attorney for the Appellant.

The writ of error in the above-entitled cause to the Supreme Court of the United States is hereby allowed, as prayed for, and the bond on appeal for costs is fixed in the sum of three hundred dollars.

M. F. MORRIS,
Associate Justice, Court of Appeals, D. C.

26 (Endorsed:) No. 1297. The United States ex rel. Rebecca J. Taylor, appellant, vs. William H. Taft, Secretary of War. Petition for writ of error to S. C. U. S. Order allowing same and fixing amount of bond. Court of Appeals, District of Columbia. Filed Jun. 24, 1904. Henry W. Hodges, clerk.

27 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the Justices of the Court of Appeals of the District of Columbia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between the United States ex rel. Rebecca J. Taylor, appellant, and William H. Taft, Secretary of War, appellee, a manifest error hath happened, to the great damage of the said appellant, as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 1st day of May, in the year of our Lord one thousand nine hundred and six.

[SEAL.] HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

28 *Bond on writ of error.*

Know all men by these presents, that we, Rebecca J. Taylor, appellant, as principal, and The Metropolitan Surety Company, of New York City, a corporation of New York, as surety, are held and firmly bound unto the appellee, William H. Taft, Secretary of War, in the full and just sum of three hundred dollars ($300) to be paid to the said appellee, William H. Taft, Secretary of War, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this first day of May, in the year of our Lord one thousand nine hundred and six.

Whereas lately at a Court of Appeals of the District of Columbia, in a suit depending in said court between The United States ex rel. Rebecca J. Taylor, appellant, and William H. Taft, Secretary of War, appellee, a judgment was rendered against the said Rebecca J. Taylor, appellant, and the said Rebecca J. Taylor, appellant, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said William H. Taft, Secretary of War, appellee, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said Rebecca J. Taylor, appellant, shall prosecute said writ of error to effect and answer all damages and costs if she fail to make the said plea good, then the above obligation to be void; else to remain in full force and virtue.

REBECCA J. TAYLOR, [SEAL.]
By N. E. DAWSON, *Attorney.* [SEAL.]

THE METROPOLITAN SURETY COMPANY, [Seal of the Metropolitan Surety Company.]
By CHAS. N. VANCE, [SEAL.]
Resident Vice-President.

Attest:
JOHN F. BECKER, [SEAL.]
Resident Asst. Secy.

Sealed and delivered in the presence of—
JOHN F. A. BECKER.
THOS. W. BUCKEY.
CARL REYNOLDS.

Approved by—
SETH SHEPARD,
Chief Justice Court of Appeals of the District of Columbia.

(Endorsement:) No. 1297. The United States ex rel. Rebecca J. Taylor, appellant, vs. William H. Taft, Secretary of War. Bond on writ of error to Supreme Court U. S. Court of Appeals, District of Columbia. Filed May 1, 1906. Henry W. Hodges, clerk.

29 UNITED STATES OF AMERICA, *ss:*

To William H. Taft, Secretary of War, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein the United States ex rel. Rebecca J. Taylor, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 1st day of May, in the year of our Lord one thousand nine hundred and six.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted this 1st day of May, 1906.

DANIEL W. BAKER.

30 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 29, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of the United States ex rel. Rebecca J. Taylor, appellant, vs. William H. Taft, Secretary of War, No. 1297, April term, 1906, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 4th day of May, A. D. 1906.

[SEAL.] HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

(Indorsement on cover:) File No. 20264. District of Columbia, Court of Appeals. Term No. 300. The United States ex rel. Rebecca J. Taylor, plaintiff in error, vs. William H. Taft, Secretary of War. Filed May 21st, 1906. File No. 20264.

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In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES, *ex Rel.* REBECCA J. TAYLOR, plaintiff in error,
vs.
WILLIAM H. TAFT, Secretary of War.
} No. 300.

REPLY RESISTING MOTION TO DISMISS.

The indulgence of this Honorable Court is invoked while a few features, some no doubt commendable if some be otherwise, are pointed out which render the brief in support of the motion to dismiss one requiring unusually close scrutiny. Its brevity, its air of frankness, its fluent diction, and its persuasiveness are so skilfully blended as at once to enthrall unsuspecting confidence and defy alert criticism. These features, even if unaccompanied by others, would betray the master mind, the trained intellect, the life-long lawyer, and all that in a single individual of native ability constitute a superlative greatness, such as (to briefly paraphrase an encomium by a famed litterateur of great authority) has not elsewhere been observed in our day. "No pent-up Utica contracts his powers."

Rash indeed would he be who should set out boldly to expose any features deemed questionable therein, or try openly to stem the irresistible flow of sophism which he may clearly discern issuing from beyond and above the ostensible author. It behooves him, then, to ponder well the wisdom of Sir Philip Francis, who did not fail to

recognize in the very outset of those efforts which were to immortalize the JUNIUS pseudonyme that "more must be understood than may be safely expressed." Thus pondering, he will hardly venture beyond a halting propounding of a few feeble, if not fatuous, interrogatories.

For instance, on page 1 of the brief, a sentence ends with "and making some very serious reflections on the President of the United States." Is there anything in the transcript in this case that justifies counsel in any such statement? No such thing was set out in the charge made as to the cause for which the punishment was inflicted that formed the basis of the complaint upon which this suit was founded, as will later be shown. Then why inject that statement, implying, as it does of necessity, an imputation upon a newspaper of character and standing second to none — a periodical than which none in the land is more careful and select regarding communications offered it for publication — unless in reality for the purpose of infecting those for whom intended with a prejudice in advance against the plaintiff in error?

Why was not section 234 of the District of Columbia Code presented on p. 4 so as to comprise all the "right to a writ of error to the Supreme Court" in one showing? That section is very brief, *if* not very significant.

Why were not asterisks placed, or some indication made that the sentence and paragraph quoted on p. 6 were not joined in the original — separated as they were by at least a full page of matter? That first sentence, from the world's highest living judicial authority, was quoted in the South Carolina case cited on p. 5, along with its immediately succeeding sentence: "The validity of a statute or the validity of an authority is drawn in question when the existence, or the constitutionality, or the legality of such statute or authority is denied, and the denial forms the subject of direct inquiry." (153 U. S. 285). So much from the standpoint of the decalogue.

Now the claim that "The plaintiff in error does not question the authority of the President or his proper subordinates to dismiss her when the required formalities have been complied with," and that "the contention is that this authority was not exercised in the proper manner" is misleading and unfair in that it but states part of the truth. A casual examination of the pleadings will show that she *does* question all authority to dismiss her, however scrupulously the

formalities may have been observed, if that authority was exercised, as she claims it was, without " just cause " as provided by law, without authority of law, in violation of law, and, high over all else, in violation of her rights and privileges under the Constitution of the United States; as appears in the following extracts, the indicated underscorings in which are made by her counsel with a view to the convenience of this Honorable Court.

3. That heretofore, to wit, on the 24th day of January, A. D. 1900, by *virtue of the authority vested in the Secretary of War by several statutes in such case made and provided*, the petitioner was duly and legally appointed a temporary clerk in the office of the Adjutant General of the War Department, such appointment taking effect from the first day of January, 1900, and she immediately thereafter took the prescribed oath of office and entered upon her duties prescribed by law, which duties from that time until the seventh day of June, A. D., 1902, she faithfully, efficiently and continuously performed.

4. That *by certain provisions of an act of Congress* entitled " An act making appropriations for the legislative, executive and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes," approved April 28, 1902, the petitioner and other clerks similarly appointed and employed in the War Department, were transferred to the competitive classified civil service of the United States and thereby became and were subject to the provisions and entitled to the benefits of the act of Congress, entitled " An Act to regulate & improve the civil service of the United States," approved January 16, 1883, and the rules and regulations promulgated by the President of the United States *by virtue and in the exercise of the power and authority by said act*, THE CONSTITUTION OF THE UNITED STATES, *and section 1753 of the Revised Statutes of the United States, conferred upon and vested in him.*

5. That among the said rules and regulations promulgated by the President by virtue and in the exercise of the power and authority conferred upon and vested in him by said Constitution, section 1753 of the Revised Statutes of the United States and the act of Congress, entitled " An act to regulate and improve the civil service of the United States," approved January 16, 1883, and sometimes called " the civil-service law," were the following :

"Rule II."

* * * "3. No person in the executive civil service shall dismiss, or cause to be dismissed, or make any attempt to procure the dismissal of, or in any manner change the official rank or compensation of any other person therein because of his political or religious opinions or affiliations." * * *

"8. No removal shall be made from the competitive classified service except *for just cause and for reasons given in writing; and the person sought to be removed shall have notice and be furnished a copy of such reasons*, and be allowed a reasonable time for personally answering the same in writing. Copy of such reasons, notice and answer, and of the order of removal shall be made a part of the records of the proper department or office; and the reasons for any change in rank or compensation within the competitive classified service shall also be made a part of the records of the proper department or office."

That said rules as aforesaid, so promulgated by the President, were binding upon the defendant, who could not lawfully violate, disregard or evade them.

6. That in violation, disregard and evasion of said rules *and of the petitioner's rights* in the premises, the defendant undertook to illegally and unlawfully remove her from the competitive classified civil service.

. . . . . .

7. The petitioner further avers that the letter and endorsement received by her as set forth in the preceding paragraph of the petition, did not constitute the reasons required to be in writing by section 8, of civil-service rule No. 2, set forth in paragraph 5 of this petition, where a removal of an employee from the competitive classified civil service *for just cause* is contemplated, nor did they constitute a copy of such reasons, nor the notice required by said civil-service rule. But the petitioner further avers that though she received no copy of reasons in writing for her attempted removal from office, nor the notice required by said civil-service rule, she believes and therefore avers and expects to show by competent evidence that the reason why the defendant did so as aforesaid attempt to unlawfully remove her from the competitive classified civil service, was because she held political opinions and views differing from those of the defendant and gave expression to them in the public press by the letter that she wrote to the Washington Post, a copy of which she has hereto annexed and made a part hereof, marked "R. J. T., No. 1;" and because she held (and

still holds) the political opinions and views set forth in her said letter, and procured the publication of the same, the defendant in violation, disregard and evasion of the aforesaid sections of civil-service rule 2, set forth in paragraph 5, of this petition, and *unlawfully and in violation of the petitioner's rights thereunder*, GUARANTEED TO HER BY THE CONSTITUTION OF THE UNITED STATES, attempted to remove her from the position she occupied in the competitive classified civil service, as hereinbefore set forth.

The demurrer of the petitioner, now plaintiff in error, was accompanied by the following:

Among the points of law intended to be argued at the hearing upon the above demurrer, are

. . . . . .

2. That the said respondent attempted to remove said petitioner from the competitive classified civil service of the United States, *without warrant or authority of law.*

3. That the said respondent attempted to remove said petitioner from said services without just cause.

. . . . . .

7. That the respondent, as Secretary of War, or any other head of an executive department of the Government of the United States *has no constitutional right of removing subordinates in violation of the laws of Congress or of rules promulgated by the President thereunder* or otherwise.

8. That the power of appointment and removal of the respondent as Secretary of War or of any head of an executive department, is regulated and limited by the laws of Congress and the rules promulgated by the President thereunder.

9. That a subordinate officer or employee of the United States Government, *appointed to office by virtue of the Constitution and laws of Congress, made thereunder*, has a vested right to such office until removed by the proper authorities acting within the scope of their powers and such a right is cognizable and may be enforced by a court of law.

10. That the reasons for the attempted removal of the petitioner, assigned by the respondent *post litem motam* did not constitute the "just cause" contemplated by the aforesaid section 8, of civil-service rule 2.

11. That the writing by the petitioner of the letter of May 12, 1902, set forth in said petition, did not constitute a reason or "just cause" for the removal of said petitioner from her said office.

. . . . . .

13. That the petitioner's said letter of May 12, 1902, was the public expression of her political opinions upon certain political views and policy of the President of the United States, *the freedom to express which is guaranteed to her by the Constitution of the United States;* and such public expression of her political opinions is also protected by the aforesaid section 3, of civil-service rule 2, and does not constitute the "just cause" for removal from her said office contemplated by the aforesaid section 8, of civil-service rule 2.

14. That the petitioner has by the facts set out in her petition, and admitted by the respondent in his answer thereto, shown a right to her position as a clerk in the competitive classified civil service of the United States and that this court should, by a mandamus, restore her to her said position.

Paragraph 2 directly questions the validity of the authority exercised claiming that the Secretary of War had no authority.

It is true that the pleadings also question the manner in which the authority was exercised, the formalities which the Solicitor-General refers to, but as appears from the pleadings this is not the vital point, which is that there is no authority anywhere to remove except for just cause, and that there was no cause whatever for such removal. Does this not question "the validity of the authority?" Is it not a mere quibble to say that a charge of removal from office in violation of law and without authority of law raises no question of validity because it presumes there is authority to remove founded upon law? If there is no authority whatever to remove for the cause assigned, namely, writing and publishing an article, there certainly is no valid authority for so doing. Any usurpation of authority is invalid, and the claim that the authority is usurped and exercised contrary to law is based on the invalidity of the authority, and therefore raises a question of validity.

Concisely stated, the position of the plaintiff in error is this: There is no valid authority to dismiss a civil service employee in the classi-

fied list except for "just cause." To further explain, the following illustration is presented: there is no authority to dismiss a federal judge except after impeachment. If the President arbitrarily dismissed such judge, would not the validity of his authority be questioned when the judge claimed that he had been dismissed contrary to law? It would seem that the sole question in the supposed case, as in that here presented, is as to the existence of valid authority to do the act complained of, and that the validity is directly called in question.

But to make this case even stronger, were it necessary, which we claim it is not, the validity of the civil service rules themselves, established under the authority of a United States statute, are assailed by the Secretary of War himself when, in his "answer," he sets forth that they have no binding force upon him, that they are invalid in so far as they interfere with his exercise of arbitrary and unlimited power; that, to use the language of the Steinmetz case, they are invalid as an "abuse" of his discretion, that in so far as they intended, if so intended, to take away this right, they are repugnant to his "constitutional right," and, as he claims, his unlimited power of removal. He also questions the validity of the authority when he denies that these rules vest any right in an employe.

In other words the Secretary of War has claimed that the arbitrary power of removal is the true and valid authority, and that the Civil Service Rules are invalid as an invasion of such Constitutional right, and therefore directly raises, himself, the question of the validity of the authority exercised. In his "answer" is the following:

> 5. That it is true that on November 2nd, 1896, the President of the United States promulgated the certain rules set forth in the fifth paragraph of the relator's petition. But the respondent says that such rules are, in law, administrative directions or instructions from the President to those holding office by virtue of his appointment indicating the manner in which they shall exercise their duties as his agents in the removal of subordinates, and have no other *full* effect or virtue whatsoever.
>
> And this respondent further says that such orders, directions or instructions were not intended, and if so intended, could not have the effect to restrict in anywise the constitutional right and power of this defendant as the head of a department of the

> Government to appoint and remove such inferior officers in said department as are provided for by the Congress of the United States; nor do such orders, directions or instructions have force, effect or virtue to vest in any employee any right cognizable in a court of law in the enforcement of or obedience to such instructions, or to make the head of any executive department answerable to the judicial power for any supposed violation, disregard, evasion or disobedience of the same; but for all violation, disregard, evasion or disobedience thereof the head of each executive department is answerable only to the President, in whom the executive power is vested by the Constitution.

The civil service rules, to incorporate the words of the Court in the Steinmetz case, " Became a rule of procedure and constituted, in part, the powers of"—the Secretary of War. " In other words, it became an authority of the "—Secretary of War " and, necessarily, an authority ' under the United States.' " Their " validity was and is assailed by the " Secretary of War. He claims that they have no " virtue " whatever to restrict in any way his constitutional right and power, which, he claims, is unlimited. Having himself put in question, squarely, the validity of the regulations, he cannot be heard to say that the Court has not jurisdiction.

The cases cited by the Solicitor-General do not apply, because in those cases the validity of the authority was not questioned. The Steinmetz case, referred to by him, is in our favor in that it decides:

1. That in a suit in which the validity of a regulation established under the authority of statute is assailed, the question of the validity of an authority exercised under the United States is raised.

2. That "Some discretion is not an unlimited discretion, and if the discretion is not unlimited it is reviewable." It was set forth in the pleadings that the discretion of the Secretary of War in the matter of removals is not unlimited; that the Civil Service Law and Rules and the Constitutional guarantee limit him in certain respects as set forth; hence, the discretion being not unlimited, the case is reviewable.

It may be said without imputing wrong to any man that human nature is no more absent in high places than in low. I am led thus to remark, by considerations implied in my opening paragraphs; by imputations recently cast, at least by necessary implication and inference

according to the public press, upon our judiciary by a magistrate than whom none stands higher; by some experiences hitherto of the plaintiff in error, herself; by the lessons of history; by consciousness of the reality of the grounds for the familiar adage "Where there's a will there's a way;" by the fate of the venerable Baxter according to Macaulay (I, 318), and kindred facts from the most accredited historians; and, above all, the deplorable conditions now existing, as never in our whole history they did so exist until the decade now drawing to a close. All these clearly admonish not too closely to model after the most admirable feature of the brief of the defendant in error—its portentous brevity—and I beg to submit a few more observations.

> A case may be considered to arise under the Constitution or a law of the United States whenever its correct decision depends upon the construction of either.
>
> *Cohen* v. *Virginia*, 6 Wheaton, 375.

> Or whenever the rights set up by a party may be defeated by one construction or sustained by the opposite construction.
>
> *Osborne* v. *Bank of U. S.*, Wheat., 738.
>
> *Starin* v. *New York*, 115 U. S., 248.

> The jurisdiction for review of the judgments of courts extends to adverse decisions upon rights and titles claimed under the Constitution, laws or treaties of the United States.
>
> *Carson* v. *Dunham*, 121 U. S., 321.

> When the decision is against the right claimed under the Constitution or laws of the United States a writ of error will lie to bring the judgment of the court before this court for re-examination and revision.
>
> *Ableman* v. *Booth*, 21 How., 506.

> If a question is fairly presented by the record, and its decision is necessary to the determination of the case, a judgment which rejects the claim but avoids all reference to it, is as much against the right as if it had been specifically referred to, and the right directly refused.
>
> *Chapman* v. *Goodnow*, 123 U. S., 540.

The power of appointment is regulated by law. *The power of removal is also regulated by law. Since it is regulated by law*, the head

of any executive department is answerable to the law, to the judicial power for all "violation, disregard, evasion, or disobedience" of the law. He is answerable, *not to the President*, as defendant claims, whose duty it is, *not to interpret the law, but to see that the law is faithfully executed, after it has been interpreted by the judicial power.* The Secretary of War may exercise *limited discretion* upon matters pertaining to departmental regulations as head of the Executive Department; he cannot sit in final judgment upon a point of law, where there is a contest involving a question of personal rights, without invading the constitutional domain of the judiciary, and it will not be denied that such points of law are involved in this case. The framers of the Constitution made the powers of the three branches of the Government as distinctly separate as possible, and any interference of the one with the other is clearly a usurpation of power. But, in spite of this, is it contended in this case by the Secretary of War that his power of removal is limited only by *expediency*, and not by law; and that his acts are not reviewable by the tribunals of justice established for the purpose of interpreting and enforcing the law, and, therefore, that he may override the rights of every employe of his Department, at his pleasure.

My contention is that the jurisdiction of the Judicial Department of the Government is co-extensive with that of the legislative department, or rather that it is co-extensive with the laws of the United States. That it involves the interpretation of every rule which has the force of law, and therefore the authority to examine every rule in order to determine whether it has the force of law or not, including even the Rules of the House of Representatives and the Senate, and those of the Executive Department. It certainly has in a case regularly brought before it, the right to examine any official act of any officer, and to determine whether it violates the Constitutional or other right of any citizen.

In *Kilbourn vs. Thompson*, 103 U. S., 168, 199-200, the Court took cognizance of the Rules of the House of Representatives, and, after examining them with reference to the facts in that case, declared that "there is not found in the Constitution of the United States any general power vested in either House to punish for contempts," and therefore, "that the order of the House declaring Kilbourn guilty of

contempt of its authority, and ordering his imprisonment by the Sergeant-at-Arms, is void, and affords the latter no protection in an action by Kilbourn against him for imprisonment." Neither is there found in the Constitution power vested to punish by removal or otherwise for the freedom of speech, the liberty of the press or the free exercise of religion.

Now, if the Courts have jurisdiction of such cases as these — cases involving the validity of the rules of the House of Representatives — why have they not jurisdiction to interpret and enforce the Civil Service rules, or any rule made by the President relating to the Civil Service? Why have they not jurisdiction to inquire into and pass upon any act of a ministerial officer? In the case above cited the Court, speaking through Justice Miller, said:

> "We have found no better expression of the true principle of this subject, than the following language of Mr. Justice Hoar in the Supreme Court of Massachusetts, in the case of *Burnham vs. Morrissey*, 14 Gray, 226. The opinion, or statement rather, was concurred in by all the court, including the venerable Chief Justice Shaw."

He then quoted the following:

> "The House of Representatives is not the final judge of its own power and privileges in cases in which the rights and liberties of the subject are concerned, but the legality of its action may be determined by the court. That House is *not the legislature, but only part of it*, in common with all other bodies, officers, and tribunals within the Commonwealth. Especially is it competent and proper for this court to consider whether its proceedings are in conformity with the Constitution and laws, because living under a written Constitution, no branch or department of the Government is supreme; and it is the *province* and duty of the judicial department to determine, in cases regularly brought before them, whether the powers of any branch of the Government, and even those of the legislature in the enactment of laws, have been exercised in conformity to the Constitution; and if they have not, to treat their act as null and void. (Burnham *vs.* Morrissey, 14 Gray, 226)."

Justice Miller, speaking for the Court, added:

"In the statement of the law, and in the principles there laid down, we fully concur. We must, therefore, hold, notwithstanding what is said in the case of *Anderson vs. Dunn*, that the resolution of the House of Representatives finding Kilbourne guilty of contempt, and the warrant of its Speaker for his commitment to prison, are not conclusive in this case, and in fact are no justification because, as the whole plea shows, the House was without authority in the matter. (103 U. S., 199-200.)

In the following cases, and many more, support may be found for the contention of the plaintiff in error:

N. Y. Juvenile Society vs. Roosevelt, 7 *Daly* 191.
Daily vs. San Francisco City and Co. (*Cal.*) 32 *L. R. A.* 273.
Life Ins. Assn. vs. Boogher, 3 *Mo. App.* 173.
Commonwealth vs. Camble, 62 *Pa. St.* 343.
Commonwealth vs. Mann, 5 *W. N S.* 403.
Peo vs. Dubois, 23, *Ill.*, 547.
Louthan vs. Com. Va. 79 *Va.* 198-208.
Cooley on Constitutional Limitations, p. 520-1.
Yick Wo vs. Hopkins, 118 *U. S.* 367-374..
Cummings vs. St. of Mo., 4 *Wall.*
7 *Hamilton*, 333.
Story on Equity Jurisprudence, Vol. 2, Sec. 948*A.*
Newton vs. Bd. of Comms. 100 *U. S.* 548.
People vs. Loeffler, 175 *Ill.* 585.
Madison's Minutes Vol. 4, *p.*. 540.
Ex Rel. Munday vs. Fire Comms.
Butler vs. White, 83 *Fed.* 578.
Pro ex rel. Dickels vs. Stark, 33 *Hun.* 384.
People vs. McCabe vs. Fire Comms. 43 *Hun.* 554.
Peo. vs. Campbell, 82 *N. Y.* 247.
U. S. vs. Perkins, 116 *U. S.*" 483-5.
Peo. vs. ex rel Kennedy vs. Brady, 166 *N. Y.* 44.
Miller vs. Elmendorff, 51 *App. Div. N. Y.* 173.
Ex Parte Curtis, 103 *U. S.* 371.
Field vs Clark, 143 *U. S.* 695-692.
Wayman vs. Southard, 10 *Wheat.* 41-7.
White vs. Toledo 79 *Fed.* 135.
In re Collock, 165 *U. S.* 526.
U. S. vs. Ford, 50 *Fed.* 468-9.

U. S. vs. Bailey, 9 *Peters*, 256.
Cariot vs. U. S., 4 *How.* 117.
U. S. vs. Symonds, 120 *U. S.* 49-50.
Smith vs. Whitney, 116 *U. S.* 181.
Ex parte Reed, 100 *U. S.* 13.
U. S. vs. Eliason, 16 *Peters*, 301-2.
U. S. vs. Ormsbee, 74 *Fed.* 207.
Caha vs. U. S., 152 *U. S.* 212.
Cummings vs St. of Mo., 4 *Wall.* 323.
Church of the Holy Trinity vs. U. S., 143 *U. S.* 460-2.
U. S. vs. Fisher, 2 *Cr.* 358, 386.
Wilson Co. vs. Bank, *U. S.* 770-8.
Durousseau vs. U. S., 6 *Cr.* 314.
Peo. vs. Kipley, 157 *Ill.*
Marbury vs. Madison, 1 *Cr.* 162.
Priddie vs. Thompson, 82 *Fed.* 186.
Butler vs. White, 83 *Fed.* 578.
Payne vs. Nat. Railway Pub. Co.
Butterworth vs. Hoe, 112 *U. S.* 68.
Tate vs. Dalton, 158 *N. Y.* 204.
Teal vs. Melton, 12 *How.* 285.
U. S. vs. Symonds, 120 *U. S.* 47.

President Roosevelt, while Civil Service Commissioner, referring to the Government clerk, said: "His position should depend in no way upon his party predilections, for his capacity to perform his duties has not the slightest reference to his opinions upon the tariff, the currency or any other of the great questions upon which the parties divide."

Can there be a question of greater moment than that which took precedence of all other issues on which the great parties divided in the campaign preceding, and in large measure inspiring, the letter to *The Post*? Could any publication be of a cast, considering the time and topic, more distinctively political? Many judicial assumptions crept into the record of the trial court, without evoking rebuke in the court next higher; that this publication savored of license was, not having the warrant of a jury's verdict, perhaps the most gratuitous. Which makes it my plain duty to the plaintiff in error to inform this Honorable Court that a compilation of "frozen facts" from published official documents makes the *Post* publication seem, by comparison,

tame and colorless. Still more imperative becomes my duty in view of the repetition and reiteration of that imputation in the suspiciously laconic brief on behalf of the defendant in error. The publication of said facts was financed, it is understood, by persons constituting, wholly or in part, a campaign committee; and the *Post's* correspondent was deeply versed in the contents of that work. What wonder that her womanly sensibilities were stirred to their depths by its unspeakably horrible revelations! Like Judge Parker's recitals concerning the vast contributions to a campaign fund, and their sources, it came into the contest too late to reverse the political trend. This is, of course, no occasion for the proffer of amenities. Were it so, I could not forbear rendering homage to that warm blood, coursing here, believed to have impelled to generous aid of the worthy object above indicated; and also to those strains, derived from Scottish ancestry, that cannot but recognize, with a sense of sorrow and generous indignation, the long stride evidenced in said work toward comparative respectibility to which its facts raise, at last, the dread names of Claverhouse and Killiecrankie.

Yet, in tribute to that sterling spirit here which manifested itself gloriously on both sides in the time that tried the souls of MEN; at the same time presenting an item of obvious interest for the world's foremost spelling reformer; and, by no means of least import, emphasizing the fact of the judicial assumption below that because a womanly spirit "has shown herself to be a very intelligent woman," she should be denied those rights accorded, when not withheld by usurpation, to her as well as to every other American citizen—a quotation is submitted, taken from a periodical which has been specially favored by our Chief Executive, as also by his immediate predecessor, and, in view of all the foregoing, deemed for this occasion not altogether mal-apropos:

> "Before your peerless parent first "took a shy at oil," a placid stream meandering by Zachary Taylor's birth-place was the Rapid Ann. Then, within the period of a single Presidential term, more human blood coursed down the slopes and tributary channels to mingle with the gurgling waters of that small river than, in all the ages, had accompanied the historic Tiber to the sea; and in it all not a drop was that of any slain

woman, or of any babe wounded at maternal breast, or of any maid shot down at her nuptial festival,— being all contributed by fighting men, nearly all of whom were more than double "the age of ten;" and no priest for his Peter's pence, no parson for his pesos, no American mother's boy for his hate of dastards or diabolism, unto a dismal death was watercured. Ere ended that Titanic struggle, the inner capital was wrested from Rapid Ann—note "capital," mark well the "A"—since which, Rapidan and Tiber touch elbows in the grand processional of writ history and song and romance; for, so high, so clean, so sound the cause, as it were Greek meeting Greek, no descendant of fallen worthy need blush at thought of *that* ancestral strenuosity."

Mr. Justice McKenna has kindly supplied (192 U. S. 556) our closing suggestion: "The validity was and is assailed by the plaintiff in error. We think, therefore, we have jurisdiction, and the motion to dismiss is denied."

NOBLE E. DAWSON,
Counsel for Plaintiff in Error.

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OCTOBER TERM, 1906.

THE UNITED STATES, EX REL. REBECCA J. TAYLOR,
PLAINTIFF IN ERROR,
v.
WILLIAM H. TAFT, SECRETARY OF WAR.

IN ERROR TO THE COURT OF APPEALS, DISTRICT OF COLUMBIA.

MOTION TO DISMISS, AND BRIEF IN SUPPORT THEREOF.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES, EX REL. REBECCA J. Taylor, plaintiff in error, *v.* WILLIAM H. TAFT, SECRETARY OF WAR. } No. 300.

MOTION TO DISMISS, AND BRIEF IN SUPPORT THEREOF.

Comes now the Solicitor-General on behalf of the defendant in error in the above-entitled cause and moves the court to dismiss the same for want of jurisdiction.

The plaintiff in error, Rebecca J. Taylor, was, on May 12, 1902, a clerk in the classified civil service of the United States and employed in the War Department. On that day there appeared in a newspaper published at Washington an article purporting to be signed by her, and making some very serious reflections upon the President of the United States. A few days later the Secretary of War directed that Miss Taylor be called upon to state whether she was the author of this publication.

In the event that she should admit the authorship, it was ordered that her attention should be invited to section 8 of civil-service rule 11, and

that she be allowed three days in which to submit any answer or statement she might wish to make. To this plaintiff in error answered, admitting that she was the author of the article mentioned. She offered no statement in explanation or defense but insisted that she had not been notified of any charge which called for answer under the civil service rule referred to. Upon this answer the Secretary entered an order dismissing her from the service, and filed in the records of the Department a memorandum assigning as reason therefor the publication of the article subscribed by her.

Plaintiff in error thereupon brought a petition for mandamus in the Supreme Court of the District of Columbia to compel the Secretary of War to restore her to her former position in the clerical service. The petition recites sections 3 and 8 of civil-service rule 11, the former of which prohibits dismissals for "political or religious opinions or affiliations," and the latter prescribes that no clerk shall be dismissed from the classified service except after being furnished with a copy of the reasons assigned for removal and an opportunity to answer the same. After setting out the facts relative to her dismissal substantially as above stated, the plaintiff in error assigns as grounds of relief:

First. That the procedure taken for her dismissal from office was not in conformity with the executive regulations set out, in that no copy of the reasons therefor, such as is required by those regulations, was furnished the petitioner; and,

Second. That her removal from office was because of the fact that she held and exprest political opinions differing from those of the defendant.

The Secretary of War answered the petition, setting out the facts somewhat more fully than plaintiff in error had done. He denies that Miss Taylor was removed on account of her political or religious affiliations, and avers that such action was taken by him because of the article published by her, and "by reason of the derogatory and disrespectful statements therein appearing of and concerning the President of the United States in relation to the conduct of him as Commander-in-Chief of the Army of the United States."

To this answer plaintiff in error filed a demurrer, which was overruled, whereupon she elected to stand upon the demurrer, and judgment was entered denying the writ. This judgment was affirmed by the Court of Appeals and a writ of error sued out from this court. (24 App. Cas. D. C., p. 95.)

ARGUMENT.

The right to a writ of error from the Supreme Court of the United States is given in section 233 of the District of Columbia Code (31 Stat., 1189, 1227), which reads as follows:

> Any final judgment or decree of the Court of Appeals may be reexamined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal,

> in all cases in which the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars, in the same manner and under the same regulations as existed in cases of writs of error on judgments or appeals from decrees rendered in the supreme court of the District of Columbia on February ninth, eighteen hundred and ninety-three, and also in cases, without regard to the sum or value of the matter in dispute, wherein is involved the validity of any patent or copyright or in which is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States.

The present case does not involve a pecuniary amount sufficient to warrant the writ of error, nor does it involve the validity of any patent or copyright, and the validity of no treaty or statute of the United States is brought in question. If this writ of error can be supported, it must be under the clause providing for such writ where the validity of an authority exercised under the United States is drawn in question.

The plaintiff in error does not question the authority of the President or his proper subordinates to dismiss her when the required formalities have been complied with. But she claims in the present case that there were certain rules and regulations of the civil service which were not followed in the matter of her dismissal, and hence that such dismissal was illegal. We have then drawn in question not the *validity* of an authority

exercised under the United States, but the *construction* and *application* of such authority. The fact that there is authority to dismiss is not questioned; the contention is that this authority was not exercised in the proper manner.

In the case of *South Carolina* v. *Seymour* (153 U. S., 353), a motion to dismiss for want of jurisdiction, a writ of error to the Court of Appeals of the District of Columbia, was allowed. While that case was decided in 1894, before the passage of the Code of Laws for the District of Columbia, the act by which it was governed was identical with the wording of the present section 233 of the Code. The question in that case related to the validity of an authority exercised under the United States. But the court held—

> In order to come within this clause, the validity, and not the construction only, of a treaty or statute of the United States, or of an authority exercised under the United States, must be directly drawn in question.

The same question was raised in the case of *United States* v. *Lynch* (137 U. S., 280), upon a motion to dismiss for want of jurisdiction a writ of error to the Supreme Court of the District of Columbia. That case was a petition for a writ of mandamus against John R. Lynch, Fourth Auditor, and B. F. Gilkeson, Second Comptroller of the Treasury, to compel them to audit the account of the plaintiff, who was an officer in the Navy. It was claimed that by the disallowance of the plaintiff's claim for

mileage these officers exercised a discretion which they did not possess; that this was an invalid exercise of an authority under the United States; and that hence the validity of the authority was drawn in question. The court, however, held otherwise (pp. 285, 286):

> The validity of a statute is not drawn in question every time rights claimed under such statute are controverted, nor is the validity of an authority every time an act done by such authority is disputed.
>
> What the relator sought was an order coercing these officers to proceed in a particular way; and this order the Supreme Court of the District declined to grant. If we were to reverse that judgment upon the ground urged, it would not be for want of power in the Auditor to audit the account, and in the Comptroller to revise and pass upon it, but because those officers had disallowed what they ought to have allowed, and erroneously construed what needed no construction. This would not in any degree involve the validity of their authority.

The case of *Steinmetz* v. *Allen* (192 U. S., 543) is not in point, as the court there held that the rule under which the authorities acted was invalid.

The motion to dismiss for want of jurisdiction should be granted.

HENRY M. HOYT,
Solicitor-General.

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Supreme Court of the United States.

No. 300.—October Term, 1906.

The United States ex rel. Rebecca J. Taylor, Plaintiff in Error, *vs.* William H. Taft, Secretary of War. } In error to the Court of Appeals of the District of Columbia.

[December 10, 1906.]

Relator was, on May 12, 1902, a clerk in the classified civil service of the United States, and employed in the War Department. On that day an article purporting to be signed by her and making very serious reflections on the President of the United States appeared in a newspaper published at Washington. Some days thereafter the Secretary of War directed that relator be called upon to state whether she was the author of the publication, and, if so, it was ordered that her attention should be invited to section 8 of civil service rule II, and that she be allowed three days in which to submit any answer or statement she might wish to make.

To this relator answered, admitting that she was the author of the article, but insisting that she had not been notified of any charge calling for answer under the rule.

Thereupon the Secretary entered an order dismissing her from the service, and filed a memorandum assigning as reason therefor the publication of the article.

Relator then filed her petition for mandamus in the Supreme Court of the District, to compel the Secretary to restore her. The petition recited sections 3 and 8 of civil service rule II, and assigned as grounds of relief that the procedure was not in conformity with the executive regulations set out, in that no reasons for removal had been furnished relator, and also in that the real reason of her removal was because of her political opinions and the expression of them.

The Secretary answered the petition, setting out the facts in detail, denying that relator was removed on account of her political opinions, and averring that the action was taken because of the publication of the article, containing derogatory and disrespectful statements of and concerning the President of the United States in relation to his conduct as Commander-in-Chief, and which he decided "was prejudicial to order and the efficiency of said War Department, and such offense as rendered the further connection of the petitioner with said service incompatible with the best interests of the same." And while insisting that all acts done or caused to be done by him were in conformity with the civil service rules, the Secretary submitted that the petitioner showed by her petition "no vested right,

title or interest in or to the employment formerly exercised by her in the office of the Adjutant General of the United States Army, and that the relation of such petitioner, as an employe, to the executive civil service, in respect of appointment, promotion and removal, is a matter wholly within the competence and cognizance of the political department, and the action of the head of an executive department in respect thereof is not subject to be reviewed, reversed, set aside or controlled by a court of law, nor can his action in that behalf be commanded, directed or compelled by the writ of mandamus, as the petitioner in her said petition has prayed."

Relator filed a demurrer to the answer, which was overruled, whereupon she elected to stand by the demurrer, and judgment was entered denying the writ. The judgment was affirmed by the Court of Appeals, 24 App. Cas. D. C. 95, and this writ of error then sued out.

Mr. Chief Justice FULLER delivered the opinion of the Court:

This case comes before us on a motion to dismiss the writ of error for want of jurisdiction. The right to such a writ is given in section 233 of the Code of the District of Columbia, 31 Stat. 1159, 1227, which reads:

"Any final judgment or decree of the Court of Appeals may be re-examined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in all cases in which the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars, in the same manner and under the same regulations as existed in cases of writs of error on judgments, or appeals from decrees rendered in the Supreme Court of the District of Columbia, on February ninth, eighteen hundred and ninety-three, and also in cases, without regard to the sum or value of the matter in dispute, wherein is involved the validity of any patent or copyright, or in which is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States."

If this writ of error can be maintained it is on the ground that the validity of an authority exercised under the United States was drawn in question.

The relator did not, however, question the authority of the President or his representatives to dismiss her, if the required formalities had been complied with. What she claimed was that there were certain rules and regulations of the civil service which were not observed in the matter of her dismissal, and that, therefore, such dismissal was illegal.

But this contention did not draw in question the validity of an authority exercised under the United States, but the construction and application of regulations of the exercise of such authority.

As Mr. Justice Gray said, in *South Carolina* v. *Seymour*, 153 U. S. 353, referring to an identical provision of the laws of the District prior to the code: "In order to come within this clause, the validity, and not the con-

struction only, of a treaty or statute of the United States, or of an authority exercised under the United States, must be directly drawn in question."

And, prior to that case, we had disposed of the same question in *United States* v. *Lynch*, 137 U. S. 280. That was a petition for a writ of mandamus against the Fourth Auditor and the Second Comptroller of the Treasury, to compel them to audit the account of petitioner, who was an officer in the Navy. It was insisted that by the disallowance of petitioner's claim for mileage these officers exercised a discretion which they did not possess; that this was an invalid exercise of an authority under the United States; and that hence the validity of the authority was drawn in question. We held otherwise, and said:

"The validity of a statute is not drawn in question every time rights claimed under such statute are controverted, nor is the validity of an authority, every time an act done by such authority is disputed. . . .

"What the relator sought was an order coercing these officers to proceed in a particular way, and this order the Supreme Court of the District declined to grant. If we were to reverse that judgment upon the ground urged, it would not be for want of power in the Auditor to audit the account, and in the Comptroller to revise and pass upon it, but because those officers had disallowed what they ought to have allowed and erroneously construed what needed no construction. This would not in any degree involve the validity of their authority."

Steinmetz v. *Allen*, 192 U. S. 543, is not to the contrary, for there the validity of a rule constituting the authority of certain officers in the Patent Office was drawn in question.

Writ of error dismissed.

True copy.

Test:

Clerk Supreme Court, U. S.